BRB No. 13-0326 BLA

ROBERT L. WALKER (Deceased)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SAHARA COAL TRUST	)	DATE ISSUED: 04/29/2014
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Paul C. Johnson, Jr., Associate Chief Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand Denying Benefits (2008-BLA-5846) of Associate Chief Administrative Law Judge Paul C. Johnson, Jr. (the administrative law judge), rendered on a miner's subsequent claim, filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act).[1] Director's Exhibit 4. This case is before the Board for the second time.

[1] Claimant initially filed a claim on October 2, 1980, which was deemed abandoned. Director's Exhibit 1. Claimant filed a second claim on January 28, 2003,

In its prior decision, the Board affirmed, as unchallenged on appeal, the administrative law judge's determination that claimant established thirty-one years of underground coal mine employment, and his findings that the evidence was sufficient to establish total respiratory disability at 20 C.F.R. §718.204(b), a change in an applicable condition of entitlement at 20 C.F.R. §725.309, and invocation of the rebuttable presumption of total disability due to pneumoconiosis pursuant to amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] *Walker v. Sahara Coal Trust*, BRB Nos. 11-0323 BLA and 11-0323 BLA-A, slip op. at 3 n.3 (May 22, 2012) (unpub.).

The Board vacated, however, the administrative law judge's evidentiary ruling excluding Dr. Rosenberg's opinion and his finding that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption. *Walker*, BRB Nos. 11-0323 BLA and 11-0323 BLA-A, slip op. at 5. Accordingly, the Board further vacated the award of benefits and remanded the case to the administrative law judge with instructions to initially rule on the admissibility of the evidence submitted, advise the parties of his ruling and provide them with an opportunity to respond. *Id*. at 5-6. The Board further instructed the administrative law judge to reassess all evidence of record relevant to rebuttal of the amended Section 411(c)(4) presumption, and to provide a thorough analysis and explanation of his credibility determinations. *Id*. at 6.

On remand, the administrative law judge found that employer established, by a preponderance of the evidence, that claimant did not suffer from either clinical or legal pneumoconiosis and, therefore, that employer rebutted the presumption. In addition, the administrative law judge found that, because employer established that claimant did not have pneumoconiosis, claimant could not establish entitlement to benefits under 20 C.F.R. Part 718.

On appeal, claimant argues that in finding that employer disproved the existence of pneumoconiosis, the administrative law judge mischaracterized the evidence, did not weigh the evidence consistently, and did not address all relevant evidence in accordance

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which was denied by the district director because claimant did not establish that he was totally disabled. Director's Exhibit 2. Claimant filed the present subsequent claim on March 15, 2007. Director's Exhibit 28. Claimant died on July 6, 2010, and his widow is pursuing the claim on his behalf.

[2] The Department of Labor has revised the regulation at 20 C.F.R. §725.309, effective October 25, 2013. The applicable language formerly set forth in 20 C.F.R. §725.309(d) (2013) is now set forth in 20 C.F.R. §725.309(c). 78 Fed. Reg. 59,102, 59,118 (Sept. 25, 2013).

with the Administrative Procedure Act (APA).[3] Employer responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has indicated that he will not file a substantive response unless specifically requested to do so by the Board.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, rational, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to rebut the amended Section 411(c)(4) presumption, employer must establish that claimant does not suffer from either clinical or legal pneumoconiosis,[5] or that his disability did not arise out of, or in connection with, coal mine employment. 30 U.S.C. §921(c)(4), *see* 78 Fed. Reg. 59,102, 59,114 (Sept. 25, 2013) (to be codified at 20 C.F.R. §718.305); *Consolidation Coal Co. v. Director, Office of Workers' Compensation Programs* [*Bailey*], 721 F.3d 789, BLR (7th Cir. 2013); *see also Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 478, 25 BLR 2-1 (6th Cir. 2011).

I. Clinical Pneumoconiosis

[3] The Administrative Procedure Act, 5 U.S.C. §500 et seq., provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit, as claimant's coal mine employment was in Illinois. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

[5] Clinical pneumoconiosis is defined in 20 C.F.R. §718.201(a)(1) as "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). This definition "includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment." *Id.* "'Legal pneumoconiosis' includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

In considering whether employer disproved the presumed existence of clinical pneumoconiosis, the administrative law judge considered twelve interpretations of six analog x-rays, three interpretations of one digital x-ray, four interpretations of two CT-scans, and the medical opinions of Drs. Repsher and Rosenberg. Decision and Order on Remand at 18-21.

A. Analog X-Ray Evidence

The administrative law judge found that the November 8, 1982, August 27, 2002 and March 4, 2003 analog x-rays were negative for pneumoconiosis, and stated, "I give little weight to the[se] three x-rays . . . because they were not taken in the recent past." *Id*. at 18; Director's Exhibits 1, 2; Employer's Exhibit 2. He also gave little weight to the April 30, 2003 and December 19, 2006 analog x-rays because they were taken for treatment purposes, were not reported on ILO forms, and the physicians did not set forth any diagnoses of pneumoconiosis. Decision and Order on Remand at 18; Employer's Exhibit 2.

Regarding the most recent analog x-ray, taken on August 27, 2007, the administrative law judge noted that it was read as positive for pneumoconiosis by Drs. Whitehead, Ahmed, and Smith, all of whom are dually qualified as Board-certified radiologists and B readers, and read as negative for pneumoconiosis by Drs. Wiot and Meyer, who are also dually qualified radiologists.[6] Decision and Order on Remand at 18; Director's Exhibits 8, 22, 27; Claimant's Exhibit 6; Employer's Exhibit 5. After summarizing the curricula vitae of the readers, the administrative law judge determined that Drs. Meyer and Wiot had "superior credentials . . . in interpreting chest x-rays for the existence of pneumoconiosis," based on Dr. Meyer's publication of articles specifically related to pulmonary radiology and Dr. Wiot's role in the development of the ILO classification system. Decision and Order on Remand at 19. Thus, the administrative law judge credited "their negative readings over the positive readings of the other physicians." *Id*. The administrative law judge also found, based on the testimony of Drs. Repsher and Rosenberg, that Dr. Whitehead's observation of linear opacities on this analog film was consistent with the negative readings by Drs. Meyer and Wiot, and "credit[ed] their readings over those of Drs. Smith and Ahmed." *Id*. In addition, the administrative law judge stated, "based on the shape of the opacities, their location predominantly in the middle and lower lung zones, and the presence of honeycombing, I credit the uncontradicted testimony of Drs. Repsher and Rosenberg that the x-rays are not consistent with pneumoconiosis." *Id*. at 20. The administrative law judge concluded that

[6] The administrative law judge found that there is no information in the record concerning Dr. Whitehead's credentials, but he took judicial notice of the fact that Dr. Whitehead is dually-qualified as a Board-certified radiologist and B reader. Decision and Order on Remand at 2 n.3-4, 19.

the August 27, 2007 analog x-ray, and the preponderance of the analog x-ray evidence as a whole, was negative for clinical pneumoconiosis. *Id*.

Claimant asserts that the administrative law judge failed to adequately explain his finding that the qualifications of Drs. Wiot and Meyer are superior to those of Drs. Whitehead, Smith and Ahmed. Claimant maintains that Dr. Meyer's resume does not indicate that he teaches in the area of coal workers' pneumoconiosis or occupational lung disease, and that his research in general thoracic and pulmonary radiology does not heighten his credentials, and is not more relevant to the issue of pneumoconiosis than the research conducted by Drs. Ahmed and Smith. Claimant further contends that there is no proof that Dr. Wiot's past administrative appointments make him more proficient at reading analog x-rays for pneumoconiosis.

Claimant also alleges that the administrative law judge did not treat the radiographic evidence consistently and shifted the burden of persuasion to claimant. To support his position, claimant argues that the administrative law judge improperly considered the medical opinions of Drs. Repsher and Rosenberg when weighing the analog x-ray readings, failed to resolve the disagreement among the x-ray readers regarding the significance of the shape and location of the opacities, and ignored the contrary opinions of pulmonologists Drs. Rasmussen and Houser that linear opacities are consistent with pneumoconiosis. Claimant argues that the administrative law judge should not have deferred to Drs. Repsher and Rosenberg, neither of whom read the August 27, 2007 x-ray, and accepted their opinions that linear opacities in the middle and lower zones, and honeycombing, are not consistent with pneumoconiosis to credit the negative readings of Drs. Wiot and Meyer. Claimant asserts that the ILO classification system specifically includes irregular shaped opacities and opacities located in any of the six lobes as consistent with pneumoconiosis. Claimant further contends that the administrative law judge did not consider the position of the National Institute for Occupational Safety and Health (NIOSH) that "it is now generally agreed that coal workers' pneumoconiosis may also show irregular opacities." Claimant's Brief in Support of Petition for Review at 9-10, citing NIOSH Self-Study Syllabus for Classification of Radiographs of Pneumoconiosis, pp. 38-39. Claimant asserts that the administrative law judge did not consider that Dr. Rosenberg acknowledged that NIOSH describes pneumoconiosis as typically appearing as mixed dust lesions with varying sizes and shapes. *Id.*; Employer's Exhibit 7 at 53-57.

Claimant's contentions have merit, in part. Although, contrary to claimant's allegation, the administrative law judge permissibly found that Dr. Meyer's articles on pulmonary radiology and Dr. Wiot's work related to the ILO classification system rendered their respective qualifications superior to those of Drs. Whitehead, Ahmed and Smith, claimant is correct in arguing that superior qualifications cannot cure defects

underlying a physician's x-ray reading.[7] *See Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 22 BLR 2-265 (7th Cir. 2001); *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114 (2006) (en banc) (McGranery and Hall, JJ., concurring and dissenting). Referring to the interstitial changes that he found in the middle and lower lung zones on claimant's August 27, 2007 analog x-ray, Dr. Wiot stated that pneumoconiosis "invariably begins in the upper lung fields" and that "[t]his is an irregular change, whereas coal worker's pneumoconiosis is a rounded opacity . . . . There are multiple causes of this type of fibrosis, but coal worker's pneumoconiosis is not one of them." Director's Exhibit 22. Similarly, Dr. Meyer stated that the "[s]evere pulmonary fibrosis with mid and lower zone predominance . . . is not a manifestation of coal workers' pneumoconiosis, which invariably begins as an upper zone predominant fine nodular process."[8] Employer's Exhibit 27. As claimant suggests, the administrative law judge did not address the fact that 20 C.F.R. §718.102, which defines what constitutes a positive or negative x-ray reading for pneumoconiosis, does not require that the opacities be rounded or appear in specific lung zones. *See* 20 C.F.R. §§718.102; 718.202(a)(1). Claimant is also correct in asserting that the administrative law judge accepted the opinions of Drs. Repsher and Rosenberg, that honeycombing and linear opacities in the middle and lower lung zones are not consistent with clinical pneumoconiosis, to credit

[7] The administrative law judge found that, in addition to being a dually qualified radiologist and a member of the American College of Radiology, Dr. Meyer is a member of the Society of Thoracic Radiology and has published articles in thoracic and pulmonary radiology, in contrast to the articles published by Drs. Ahmed and Smith, which involved either general radiological subjects or were oriented to women's health issues. Decision and Order on Remand at 19. The administrative law judge noted that Dr. Wiot has "unassailable credentials" in the interpretation of coal workers' pneumoconiosis, including that he co-chaired both a workshop on ILO classification of pneumoconiosis, and a symposium on radiology of pneumoconiosis at the 9th International Conference on Occupational Respiratory Disease in Kyoto, Japan in 1997, and was the United States representative to that conference; he was involved in the ILO radiological classification of pneumoconiosis for over twenty years; served on the American College of Radiology Task Force on Pneumoconiosis since it was formed in 1969; he was professor of radiology at the University of Cincinnati for over forty years and professor emeritus since 1998. *Id*.

[8] In contrast, Dr. Smith found "coal workers' pneumoconiosis with interstitial fibrosis s/p, all zones" and Dr. Ahmed found "simple pneumoconiosis category t/p, 2/2" in all zones which includes linear and round shape opacities in the upper zones. Director's Exhibit 27; Claimant's Exhibit 6. Dr. Whitehead found pneumoconiosis category s/t, 3/2 in the middle and lower zones. Director's Exhibit 8.

the negative readings of Drs. Wiot and Meyer, without fully considering the contrary opinions of Drs. Houser and Rasmussen.[9]

Because the administrative law judge did not apply 20 C.F.R. §718.102, and did not resolve the conflict among the opinions of Drs. Repsher, Rosenberg, Houser and Rasmussen, we must vacate his finding that the August 27, 2007 analog x-ray is negative for pneumoconiosis. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314, 25 BLR 2-115, 2-130 (4th Cir. 2012); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 490, 23 BLR 2-18, 2-26 (7th Cir. 2004). In light of our decision to vacate the administrative law judge's finding with respect to the August 27, 2007 analog x-ray, we must also vacate the administrative law judge's determination that the preponderance of the analog x-ray evidence, as a whole, was negative for clinical pneumoconiosis.

On remand, the administrative law judge must initially reconsider the readings of the August 27, 2007 analog x-ray proffered by Drs. Wiot, Meyer, Whitehead, Smith and Ahmed, and determine whether this film is positive or negative for pneumoconiosis in accordance with 20 C.F.R. §718.102. If he determines that the x-ray evidence is positive for pneumoconiosis, he must then weigh the medical opinions relevant to whether the pneumoconiosis detected on the film is clinical pneumoconiosis, i.e., a condition "characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). The administrative law judge must resolve the conflicts among the opinions in light of the physicians' relevant qualifications and the extent to which each opinion is reasoned and documented.[10] *See*

[9] The administrative law judge summarized the medical reports of Drs. Houser and Rasmussen, but did not address their opinions that interstitial fibrosis, including irregular opacities in the middle and lower zones and honeycombing, are features of coal workers' pneumoconiosis. Decision and Order on Remand at 4-5, 13-14. Dr. Houser stated, "[i]nterstitial fibrosis and honeycombing are features of both coal workers' pneumoconiosis and idiopathic pulmonary fibrosis." Claimant's Exhibit 7. Referring to several studies, Dr. Rasmussen opined that the medical literature justifies a conclusion that coal mine dust exposure can cause interstitial fibrosis, indistinguishable from idiopathic interstitial fibrosis, including irregular opacities and honeycombing. Claimant's Exhibit 5.

[10] Claimant challenges the administrative law judge's crediting of pulmonologists who did not read the x-rays at issue, over physicians with special radiological qualifications who did. Claimant also contends that Drs. Houser and Rasmussen fully discussed both the 1999 and 2001 statements of the American Thoracic Society (ATS) regarding the diagnosis of idiopathic pulmonary fibrosis (IPF), while Drs. Repsher and Rosenberg did not acknowledge the ATS requirement that environmental causes be ruled

Bailey, 721 F.3d at 796; *Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 24 BLR 2-33, 2-37 (7th Cir. 2007).

B. Digital X-Ray and CT Scan Evidence

The administrative law judge considered three readings of a January 8, 2008 digital x-ray, one reading of an October 12, 2007 CT-scan, and two readings of a January 8, 2008 CT scan. With respect to the January 8, 2008 digital x-ray, Dr. Wiot detected "interstitial disease primarily in the bases, but extending into the mid lungs" and stated, "[t]his is an irregular change, whereas coal worker's pneumoconiosis is a rounded opacity." Director's Exhibit 22. Dr. Spitz found interstitial disease "primarily in the lung bases and in the middle zones with almost complete sparing of the upper portions of the zones . . . consistent with [idiopathic pulmonary fibrosis (IPF)] or [usual interstitial pneumonitis (UIP)]. There are other etiologies for interstitial fibrosis, but coal worker's pneumoconiosis is not one of them." *Id.* Dr. Alexander found emphysematous changes in the left upper zones, "[s]mall primarily round opacities . . . present bilaterally, consistent with pneumoconiosis, category p/p, 3/3. Some 's' opacities are also present." Claimant's Exhibit 1.

Dr. Manubay read the October 12, 2007 CT scan as showing bilateral signs of interstitial fibrosis in the lung bases. Employer's Exhibit 2. Dr. Wiot found that the January 8, 2008 CT scan revealed interstitial fibrosis in the middle and lower zones "sparing the upper lung fields … [t]he distribution and character of these changes are those of UIP and IPF. This is not a manifestation of coal dust exposure." Director's Exhibit 22. In contrast, Dr. Smith found small opacities, "emphysema associated with [coal] dust, in association with p-type opacities and pneumoconiotic changes," and opined that the CT scan corroborated the small opacities "found on the plain PA and lateral [B] reader chest films" with "profusion 2/2 and 3/2," including the January 8, 2008 digital x-ray. Claimant's Exhibit 3.

The administrative law judge determined that the January 8, 2008 digital x-ray was negative for pneumoconiosis, finding that Dr. Alexander's "credentials are outweighed by Dr. Spitz and are significantly outweighed by those of Dr. Wiot," who

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out, regardless of whether there is histological evidence available. Claimant further maintains that Dr. Rasmussen did not state that there was no clear-cut relationship between coal dust exposure and IPF, nor did he indicate that there might be a relationship between claimant's interstitial fibrosis and IPF. In addition, claimant alleges that the administrative law judge did not consider that his medical history is inconsistent with the evidence in the record describing the rapid progression typical of IPF.

"possesses the highest qualifications." Decision and Order on Remand at 20. The administrative law judge further found that the October 12, 2007 CT scan was negative for pneumoconiosis, as Dr. Manubay did not explicitly diagnose the disease, nor did he link the fibrosis he observed to coal dust exposure. *Id*. at 21. The administrative law judge determined that the CT scan dated January 8, 2008 was negative, based on Dr. Wiot's superior qualifications. *Id*. The administrative law judge concluded, therefore, that the digital x-ray and CT scan evidence "is negative for the presence of pneumoconiosis." *Id*.

Claimant argues that the administrative law judge erred in considering both of the negative readings of the January 8, 2008 digital x-ray submitted by employer because, pursuant to 20 C.F.R. §§718.107 and 725.414, and the Board's decision in *Webber v. Peabody Coal Co.*, 23 BLR 1-123, 1-135 (2006) (en banc)(J. Boggs, concurring), *aff'd on recon.*, 24 BLR 1-1 (2007) (en banc), each party may submit only one interpretation of each digital x-ray.[11] Claimant also contends that the administrative law judge erred in determining that Dr. Wiot's qualifications are superior to those of Dr. Alexander when both physicians are dually qualified radiologists. Claimant further alleges that the administrative law judge mischaracterized Dr. Manubay's interpretation of the October 12, 2007 CT scan as negative for pneumoconiosis, and erred in finding that Dr. Wiot's negative reading of the January 8, 2008 CT scan was entitled to greater weight than Dr. Smith's positive reading.

Claimant's arguments have merit. As was the case with the analog x-ray evidence, whether the digital x-ray and CT scan evidence is negative for pneumoconiosis depends on the administrative law judge's resolution of the issue of the location and type of opacities that are diagnostic of pneumoconiosis. Because the administrative law judge did not resolve this issue in the context of the digital x-ray and CT scan evidence, we vacate his finding that this evidence was negative for clinical pneumoconiosis. In addition, claimant is correct in asserting that the administrative law judge was required to exclude either Dr. Wiot's or Dr. Spitz's interpretation of the January 8, 2008 digital x-ray because the parties are limited to one interpretation of each digital x-ray. 20 C.F.R. §§718.107(a), 725.414(a)(2)(ii), (a)(3)(ii); *Webber*, 23 BLR at 1-135. Claimant also alleges correctly that the administrative law judge's finding that Dr. Manubay's reading of the October 12, 2007 CT scan was negative for pneumoconiosis was not adequately explained. The administrative law judge did not provide a rationale for his finding that

[11] Claimant also maintains that the administrative law judge excluded Dr. Spitz's reading of the January 8, 2008 digital x-ray at the hearing, but erroneously included it in his consideration of the relevant evidence in his Decision and Order. Claimant's Brief in Support of Petition for Review at 11. A review of the hearing transcript indicates, however, that the administrative law judge excluded Dr. Spitz's reading of the August 27, 2007 analog x-ray. Hearing Transcript at 29-30; Employer's Exhibit 10.

Dr. Manubay's observations of bilateral interstitial fibrosis, without identification of the cause, constituted affirmative evidence of the absence of pneumoconiosis. *See Bailey*, 721 F.3d at 794. Accordingly, we vacate the administrative law judge's determination that the digital x-ray and CT scan evidence was negative for clinical pneumoconiosis.

On remand, the administrative law judge must render a finding as to whether the parties have demonstrated, in accordance with 20 C.F.R. §718.107(b), that digital x-rays are "medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits."[12] 20 C.F.R. §718.107(b); *see Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006) (en banc) (McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon*. 24 BLR 1-13 (2007) (en banc) (McGranery & Hall, JJ., concurring and dissenting). If the administrative law judge concludes that this foundation has been laid, he must determine which of the two readings of the January 8, 2008 digital x-ray submitted by employer is admissible. 20 C.F.R. §§718.107(a), 725.414(a)(2)(ii), (a)(3)(ii); *Webber*, 23 BLR at 1-135. He is then required to reconsider the admissible readings of the digital x-ray obtained on January 8, 2008, and the readings of the CT scans dated October 12, 2007 and January 8, 2008,[13] to determine if employer has affirmatively rebutted the presumed existence of clinical pneumoconiosis. In resolving the conflicts in the interpretations of each type of evidence, the administrative law judge should apply his findings regarding the issue of the location and the shape of opacities required for the diagnosis of pneumoconiosis, to the extent that the parties have established that these criteria are relevant to digital radiological methods. The administrative law judge should also resolve the conflicts in the evidence in light of the physicians' relevant qualifications and the extent to which the opinions expressed are reasoned and documented.[14] *See Bailey*,

[12] Neither Dr. Wiot, nor Dr. Spitz, identified the January 8, 2008 x-ray as a digital x-ray, nor did they indicate whether digital x-rays are medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits. Director's Exhibit 22. Dr. Wiot identified the x-ray as of "acceptable quality by ILO standards (quality-1)." *Id.* Dr. Alexander stated, the "film quality is 1, although this is a digital x-ray." Claimant's Exhibit 1.

[13] Claimant conceded at the hearing that Dr. Wiot's reading of the CT scan, dated January 8, 2008, included a statement sufficient to satisfy the requirements of 20 C.F.R. §718.107(b). Hearing Transcript at 11-12; Director's Exhibit 22 at 53.

[14] In assessing the opinions in which Drs. Wiot, Meyer, Spitz, Repsher and Rosenberg attributed claimant's totally disabling respiratory and pulmonary impairment to usual interstitial pneumonitis/IPF, the administrative law judge should take note that the regulation implementing the rebuttal provisions of amended Section 411(c)(4) presumption bars reliance on an opinion in which the etiology of a totally disabling obstructive respiratory or pulmonary disease is unknown. 78 Fed. Reg. 59,102, 59,115 (Sept. 25, 2013) (to be codified at 20 C.F.R. §718.305(d)(3)).

721 F.3d at 796; *Stalcup*, 477 F.3d at 484, 24 BLR at 2-37. In rendering all of his findings on remand, the administrative law judge must set forth the bases for his credibility determinations in accordance with the APA. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

II. Legal Pneumoconiosis

Upon indicating that he was considering the issue of legal pneumoconiosis, the administrative law judge credited the opinions of Drs. Rosenberg and Repsher because "[b]oth physicians believe that the combination of bibasilar fibrosis with associated honeycombing and the absence of rounded opacities in the upper lung zones are classic evidence for IPF," not coal workers pneumoconiosis. Decision and Order on Remand at 22. The administrative law judge found that "Dr. Rosenberg's opinion is entitled to the greatest weight," as it was based on an extensive review of claimant's medical records as well as the relevant medical literature. *Id*. at 21. The administrative law judge then discredited Dr. Houser's opinion, that claimant has coal workers' pneumoconiosis, because it was based on Dr. Whitehead's positive interpretation of the August 27, 2007 analog x-ray that the administrative law judge determined was negative for clinical pneumoconiosis. *Id*. at 18, 22. He discredited Dr. Sanjabi's opinion diagnosing coal workers' pneumoconiosis because it was based on an x-ray "with no ILO classification" and "no ILO form." *Id*. Similarly, the administrative law judge found that Dr. Reddy's diagnosis of coal workers' pneumoconiosis was entitled to little weight, as Dr. Reddy based his opinion on a March 4, 2003 x-ray which the administrative law judge found to be negative for pneumoconiosis. *Id*. at 23. The administrative law judge concluded, therefore, that Dr. Rosenberg's opinion, as corroborated by that of Dr. Repsher, was sufficient to establish the absence of legal pneumoconiosis. *Id*.

Claimant argues that the administrative law judge's discussion of legal pneumoconiosis is no more than a reiteration of his findings on the issue of the existence of clinical pneumoconiosis, as he focused on the extent to which the physicians' opinions were consistent with his determination that the radiological evidence affirmatively established the absence of clinical pneumoconiosis. Alternatively, claimant challenges the administrative law judge's decision to credit the opinions of Drs. Repsher and Rosenberg over the contrary opinions of record, primarily restating the arguments he raised with respect to the administrative law judge's findings on clinical pneumoconiosis.

Because the administrative law judge's analysis of the issue of legal pneumoconiosis relied heavily upon his weighing of the radiological evidence regarding the shape and location of the opacities, we agree with claimant that the administrative law judge did not properly address the issue of the existence of legal pneumoconiosis. Accordingly, we vacate his finding that the opinions of Drs. Repsher and Rosenberg are sufficient to establish that claimant did not have legal pneumoconiosis.

On remand, the administrative law judge must first resolve the issue of whether employer has affirmatively established rebuttal of the presumed existence of clinical pneumoconiosis, as instructed *supra*. The administrative law judge must then determine whether employer has established rebuttal of the presumed existence of legal pneumoconiosis, i.e., "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). In so doing, the administrative law judge should be mindful of the fact that legal pneumoconiosis encompasses a broader set of conditions than clinical pneumoconiosis, and that the diagnosis of legal pneumoconiosis is not dependent upon a positive x-ray reading. *See Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 898, 22 BLR 2-409, 426-427 (7th Cir. 2002); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000). Thus, the administrative law judge must determine whether Dr. Rosenberg's opinion adequately addresses legal pneumoconiosis, specifically whether coal dust exposure was a causal factor in claimant's "oxygenation abnormality."[15] Employer's Exhibits 1, 11. The administrative law judge must also determine whether the opinions of Drs. Repsher and Rosenberg, that claimant does not have legal pneumoconiosis because he does not have an obstructive impairment, are supported by the record in light of Dr. Seten's treatment notes showing that he treated claimant for chronic obstructive pulmonary disease (COPD) on August 24, 2004, and reported a history of COPD from 2005 through 2007. Employer's Exhibit 2 at 22, 25, 27, 30, 34, 40, 43, 53, 56, 63, 65, 68; Decision and Order on Remand at 16. Finally, consistent with the APA, the administrative law judge must provide a rationale for crediting the opinions of Drs. Repsher and Rosenberg attributing claimant's totally disabling respiratory and pulmonary impairment to UIP/IPF, considering that both the prior and current versions of the regulation implementing the presumption bar reliance on an opinion in which the etiology of a totally disabling obstructive respiratory or pulmonary disease is of an unknown origin. 78 Fed. Reg. 59,115 (Sept. 25, 2013) (to be codified at 20 C.F.R. §718.305(d)(3)); 20 C.F.R. §718.305(d) (2009); *see Wojtowicz*, 12 BLR at 1-165.

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[15] In his November 19, 2008 report, Dr. Rosenberg stated:

> [Claimant] has associated restriction or small lungs with an oxygenation abnormality in association with exercise . . . .With respect to Mr. Walker's impairments, he clearly has marked oxygenation abnormality, as outlined by the exercise blood gases of Dr. Houser. Consequently, from a pulmonary perspective, he would be considered disabled from performing his previous coal mining job or other similar arduous types of labor.

Employer's Exhibit 1. At his October 9, 2009 deposition, Dr. Rosenberg reiterated that claimant had an oxygenation abnormality consistent with IPF. Employer's Exhibit 7 at 91-92.

If, on remand, the administrative law judge finds that employer has established that claimant did not suffer from either clinical or legal pneumoconiosis, he can reinstate the denial of benefits. If he determines that employer has not rebutted the amended Section 411(c)(4) presumption by this method, he must consider whether employer established that claimant's disability did not arise out of, or in connection with, coal mine employment.[16] 30 U.S.C. §921(c)(4), as implemented by 78 Fed. Reg. 59,102, 59,114 (Sept. 25, 2013) (to be codified at 20 C.F.R. §718.305); *Bailey*, 721 F.3d at 796.

Accordingly, the administrative law judge's Decision and Order on Remand, is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

[16] In our prior Decision and Order, we also instructed the administrative law judge that if he awards benefits on remand, he must consider whether the amount of time counsel billed was reasonable, and provide a sufficient rationale for disallowing any amount of time he deems excessive, when addressing claimant's counsel's attorney fee petition. *Walker v. Sahara Coal Trust*, BRB Nos. 11-0323 BLA and 11-0323 BLA-A, slip op. at 9 (May 22, 2012) (unpub.).